Diane Farrell
★ for Congress ★

Farrell for Congress
mail: P.O. Box 5136 • Westport, CT 06881-5136
tel: 203 341-8714 fax: 203 227-7764
email: Diane@FarrellForCongress.com
web: www.FarrellForCongress.com

To Whom It May Concern: AOR 2004-20

I am writing to request an advisory opinion regarding the application of the Federal Election Campaign Act ("FECA") to primary elections in the State of Connecticut. Specifically, I am asking whether recent changes in the law of Connecticut that governs the manner in which major parties nominate candidates for the general election is legally significant for the purposes of FECA. As the campaign manager for Diane Farrell, a candidate for the office of Representative to the United States House of Representative from Connecticut, I would request that the Commission immediately address this question in order that candidates like myself can take any necessary steps to assure that our campaign committees are operating in full compliance with the law.

Prior to last year's changes, Connecticut would hold a primary election only when two or more candidates for an office received in excess of fifteen percent of the vote at a state political party's convention. In that event, a losing candidate whose vote total exceeded the fifteen percent threshold could request a primary pursuant to state law. Under this system a candidate could not qualify for the primary ballot by filing petitions with the Connecticut Secretary of State.

In Advisory Opinion 1976-58, the Commission reviewed the old statute and concluded that the convention was considered an election for the purposes of FECA. If Connecticut held a primary at the request of a losing candidate, the resulting primary would be considered a separate election under FECA. The convention and the primary would be subject to separate contribution limits. Because the convention had authority to nominate a candidate absent a request for a primary by a candidate receiving the requisite number of votes at the convention, the Commission reasoned that the convention satisfied the definition of election found in FECA. 2 USC §431(1)(A).

Last year Connecticut changed its law to provide an alternative means to secure a primary election. A candidate may now a file petition containing the signatures of two percent of the active enrolled party members in a Congressional District.

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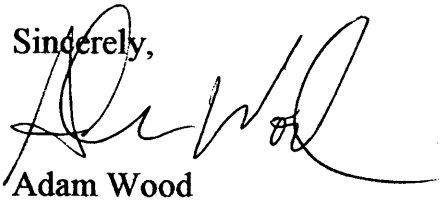
The new law now resembles less the statute that the Commission reviewed in Advisory Opinion 1976-58, and more the section of the New York election code that it reviewed in Advisory Opinion 1986-17. Under that New York statute, a candidate could secure a primary either by obtaining at least twenty-five percent of the vote of the state committee of a political party and making a written demand to the State Board of Elections, or by filing a petition with the requisite number of signatures. A petition could also be filed to allow voters an opportunity to write in a candidate for the office. If only one candidate qualified for the primary ballot and no petition for write in candidacies was granted, then no primary election would be held and the party's designated candidate would appear on the general election ballot.

Under these circumstances, the Commission determined that the meeting of the party's state committee was not an election, and that the regularly scheduled primary was an election even if no candidate's name appears on the primary ballot. Because New York law provided a means other than through participation in the state party process to secure a primary, the Commission concluded that the state committee process was not an election. The Commission reasoned that the state committee did not have authority to nominate, but only to designate a candidate for nomination. The designation would be conclusive only if no candidate successfully petitioned for a primary.

Like the New York statute addressed in Advisory Opinion 1986-17, Connecticut law provides that no names for an office will appear on the primary ballot and the party's designated candidate will be the party's general election nominee unless another candidate has satisfied the petition requirements of state law. There are differences between the two states' laws, but it is unclear that these differences are legally significant.

Because of the uncertainty created by the change in Connecticut's code and the apparent similarity of the new law to the New York statute addressed in Advisory Opinion 1986-17, I would request that the Commission reaffirm its holding in Advisory Opinion 1976-58, or readdress the application of FECA to Connecticut elections.

Sincerely,



Adam Wood

Campaign Manager, Farrell for Congress